



Federal Office  
of Economics  
and Export Control  
BAFA

# Transit Control - from a licensing authority's perspective

Identification of effective implementation practices by examining UNSCR 1540 (2004) after a Decade of its Existence

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## International Background

- **UNSC Res. 1540 (2004)**

calls for establishing controls on transit of sensitive items

**Art. 3 states:**

*“All States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:*

*(d) establish, develop, review and maintain appropriate effective national export and transshipment controls over such items, including appropriate laws and regulations to control export, transit, transshipment and re-export [...]”.*



## Definition:

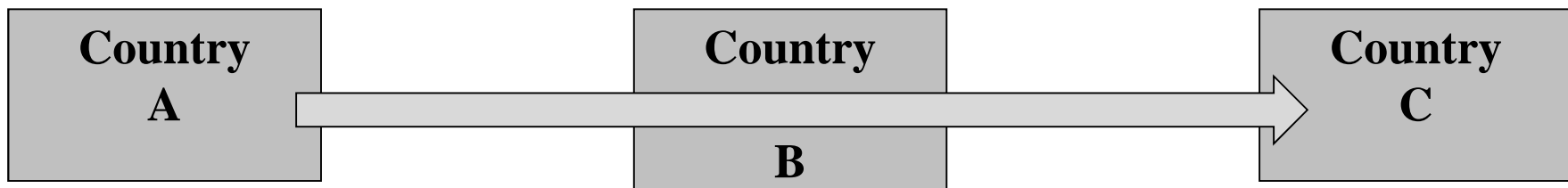
### Transit:

an item *passes through* a given country on its way from the country of consignment to the country of destination

*The export takes place from country A.*

*Through the territory of country B, a transit occurs.*

*The entering into country C constitutes an import.*





## Definition: Art. 2 no. 7 EC-Reg. 428/2009 and § 2 no. 9 AWG

### EU

According to Art. 2 No 7 Dual-use-Reg. 'transit' shall mean a transport of non-Community dual-use items entering and passing through the customs territory of the Community with a destination outside the Community.

### German Foreign Trade Act (AWG)

According to § 2 no. 9 AWG ,transit' shall mean

1. the transportation of material goods from abroad through Germany without the goods having been released for free circulation in Germany, and
2. the transportation of material goods in free circulation from another Member State of the European Union through Germany.



## What matters:

- Transit is closely connected to exports
- What finally matters:  
is the point of view which is determined by the actual involvement of a country  
encountered in a transfer of an item from one to another country



## Exclusion

- Transit and Export should not appear at the same time
- if a transfer takes place from Country A to Country B
  - this should not be treated as a transit case through Country B,  
if the intention of the exporter refers to a **definite export** to Country B,  
not only to an intermediate station in Country B (on the way to Country C)





## Germany: Transit

- Legal basis
  - Art. 6 (1) Reg. EC 428/2009: Ban on transit  
WMD end-use, items listed in Annex I
  - Sect. 44, 45 AWW: Licensing requirement  
WMD end-use, items listed in Annex I



## Different Scenarios

- Items stay on board
- Items will be unloaded
- Change of means of transportation
- Temporary storage or customs procedure?
- Decisive question: change of destination?





## Decision options

Individual case-related view:

- Ban on a transit, Art. 6 para. 1 EC Reg. 428/2009
- License requirement, Section 44 AWW
- “Zero notice”: Conditions are not met



## Decision-making process:

### Phase 1:

- Pre-check of submitted data
- Documentation of information
- Request for additional information

### Phase 2:

- Technical assessment
- Documentation of result

### Phase 3:

- Final legal and procedural review
- Final documentation
- Issuing of a decision



## Consequences

- Prohibition of a transit: Re-export requires an individual export authorization
- License requirement: Usual license procedure that demands an exporter's application
- Costs of the transit control procedure
- Possibility of an appeal or a legal action against the decision
- No reaction of the exporter: sale by force or destruction



## Challenges

- Fact findings, investigation
  - Physical inspection; unloading; timeframe
- Forecasting decision
- Legal analysis
- Technical parameters



## Conclusion

Problems and risks caused by transit activities deserve close attention within the context of fighting proliferation:

- Prevention of circumvention of export control
- Strengthening of export control
- Enormously raises industry's awareness of sensitive export (preventive effect)
- Striking the right balance between trade and security

Possible Methods for transit controls:

- Use of relevant information / Risk Management
- Evaluation of other decisions
- Comprehensive end-use controls
- Cooperation with other entities
- Information exchange between Customs and Licensing Authority exclusively via Customs single contact point (in Germany: ZKA)



## Transit Control

► **Thank you for your attention!**

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